ATTORNEY GENERAL

REPLY BRIEF

TABLE OF CONTENTS

**

I. Introduction

On October 2, 1996, the Boston Gas Company ("BoGas" or "Company") filed its initial brief. The Attorney General has reviewed the Company's initial brief and, except as specifically set forth herein, nothing therein has caused the Attorney General to change positions taken in his initial brief. Silence regarding any specific argument raised in BoGas' initial brief should not be taken as agreement by the Attorney General with such an argument.

II. Overview

The Company continues to pursue an unrealistic, patently defective PBR mechanism, a revenue recovery which fails to contain any semblance of risk/reward symmetry and an unbundling proposal that has failed to generate any significant support. Further, by the nature of certain adjustments in its filing, BoGas asserts an entitlement to a shareholder "wish list" of benefits in return for its filing a performance based regulation ("PBR") price caps scheme:

> (1) a price caps scheme with a nominal "X" guaranteeing yearly, inflation-based rate increases with virtually no stretch required of the Company;
>
> (2) a list of preapproved exogenous, "Z" factor issues that greatly reduces any Company downside risk under price caps (including a "Z" factor definition that goes well beyond that allowed in the Department's *NYNEX Order*);
>
> (3) non-symmetrical, future test year rate base adjustments on top of a year-end rate base;
>
> (4) application of a price caps adjustment concurrent with a refreshed test year cost of service adjusted for known and measurable changes, including an inflation adjustment;

(5) ratepayer subsidization[1] of its business process review and corporate downsizing that will result in increased productivity to be "captured" by shareholders (due to timing of the improvements and virtually a nonexistent "X" under the Company's PBR scheme); and

(6) an unbundling proposal that DOER, the majority of marketers and pipeline/suppliers claim would inhibit competition and leave the Company free of any responsibility for mitigation of stranded costs by simply shifting such costs to its customers and marketers.

The Department should reject the Company's price caps proposal and deny and/or amend the Company's proposed test year adjustments consistent with the Attorney General's Initial and Reply Brief recommendations.

III. Performance Based Regulation

A. The Department Should Reject The Company's PBR As Patently Defective

The Attorney General has called for rejection of the Company's proposed price cap scheme that virtually guarantees BoGas yearly rate increases and captures most all of the financial benefits for shareholders from any productivity and efficiency gains achieved. *AG Int. Br.*, p. 6. The Company responds to the Attorney General by suggesting that virtually all industries raise prices yearly. *Co. Int. Br.*, p. 43. The message is clear - if BoGas gets its PBR scheme approved consumers had better get used to the fact that BoGas's rates will be going up every year as well. *Co. Int. Br.*, p. 43. Such a corporate "mind set" that assumes yearly price increases leads one to

[1] Indeed, the record shows that Company shareholders, through 1996, will have already retained more savings through the QUEST project than the project cost. *See*, *infra.* at § IV, Appendix 2 and 3. Yet the Company *still seeks to charge these costs to ratepayers* in contravention of Department precedent that restricts recovery to net costs, *when it should be passing savings back* to ratepayers. *See*, *infra*., § IV (A) and Appendix B and C.

the conclusion, previously reached by the Attorney General, that "BoGas has requested that the Department approve an entitlement program with an annual cost of living adjustment rather than a PBR which produces higher earnings only from increased productivity gains." *AG Int. Br*., p. 6, *citing, NYNEX Order*, D.P.U. 94-50, p. 133 (1995).

The BoGas price caps proposal is a far cry from that envisioned by the Department when it stated: "Well-designed incentive mechanisms should provide utilities with greater incentives to reduce costs..." *Incentive Regulation*, D.P.U. 94-158, p. 55 (1995). The Company's proposal fails on this very basic issue.

Thus, the Attorney General renews its call for the Department to reject the Company's as it has with similar plans that provided "sufficient incentives to improve its future performance." *Massachusetts Electric Company*, D.P.U. 95-40-A, p. 17 (1995).

B. Term

1. If BoGas Is Allowed A Price Cap It Should Not Be Applied Until The End Of The Rate Year

The BoGas proposal continues to seek approval to apply its PBR at the beginning of the rate year. *Co. Int. Br*., p. 89. The Attorney General and DOER find this proposal to amount to double recovery notwithstanding BoGas' proposed partial recovery adjustments for wages & salaries and inflation. *DOER Int. Br*., p. 6. We also agree that concurrent application of a PBR scheme upon newly supplemented rates is contrary to the aim of a price caps scheme and Department precedent. *Id*. That precedent would not have a price caps scheme applied until an interim period had elapsed since a finding that the existing (or current) rates were determined to be "just and reasonable".[2] *NYNEX Order*, D.P.U. 94-50, p. 12, fn. 13 (1995).

A price caps scheme, as implemented in the *NYNEX Order,* acknowledges that inflation has impacted rates that were previously found to be "just and reasonable". *Id*., p. 139. In *NYNEX*, the Department applied the price caps scheme to the revenue requirement based upon a 1985 test year that was established under historic test year and traditional cost of service principles. *Id*., p. 12.; *NET*, D.P.U. 86-33-G (1989). By its decision in the NYNEX Order, the Department has recognized that a price caps scheme rewards, over time, growth in productivity and is therefore properly applied to rate levels that have been previously set and impacted by inflation during some interim period. *NYNEX Order*, D.P.U. 94-50, pp. 193-197 (1995). Thus price caps, by their nature, are not an adjustment to a cost of service or an add-on to a revenue deficiency (particularly with a cost of service, adjusted for known and measurable changes which already includes an updated inflation allowance[3]). Exh BGC-39, p. 35.

Indeed, the base rate increase the Company proposes, will have mitigated the effects of inflation and attrition by numerous cost of service adjustments, including resetting the Company's return on equity and inflation adjustment. The proper time for application of a price caps scheme will, therefore, be after completion of the rate year when the effects of inflation (minus

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[2] In a price caps scheme the inflation index, the GDPPI, is utilized to "refresh" the company's rates in recognition of the inflationary impact on the Company costs and, hence, its prices. *NYNEX Order*, D.P.U. 94-50, pp.139-140. Little to no inflationary impact would have, as yet, occurred on this 1995 test year cost of service, adjusted for known and measurable changes, and inflation.

[3] Though the Company would deviate from Department precedent and forego a small portion of the Department's allowed inflation adjustment (Exh. BGC-38, p. 62), the 1996 PBR adjustment should be denied and the traditional inflation adjustment allowed consistent with Department precedent. RR-DPU-79; *Incentive Regulation*, D.P.U. 94-158, p. 58; *NYNEX Order*, D.P.U. 94-50, p. 128, fn. 82 (1995).

productivity) would have had an impact on the Company's costs.[4] As a practical matter, this allows the GDPPI time to pick up inflationary cost impacts that ratepayers are expected to pay under the Company's price caps scheme.

The Attorney General notes his agreement with, and incorporates by reference, the comments of DOER that this BoGas price caps-driven concurrent increase would provide a unilateral benefit to shareholders at ratepayers expense. *DOER Int. Br*., p. 6. He also concurs with the recommendation that any price cap mechanism not be applied, at least, until December, 1997, the end of the rate year.

C. Service Quality Index

The Company's proposed amendments to its Service Quality Index ("SQI") don't go far enough and fail to address the major concern of most parties - that the measures are quite readily attainable. The Department should follow the recommendations of the Attorney General, DOER and the City of Boston (*see: infra*.) and implement a NYNEX-style SQI as more fully detailed in their respective initial briefs[5].

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[4] The Maine Public Utilities Commission only this past month (September 16, 1996) applied its initial price cap scheme which had been established by order dated January 10, 1995. *Re Central Maine Power Company*, Doc. 96-599, 170 PUR4th 412 (June 28, 1995) and Doc. 92-345(II), 159 PUR4th 209(January 10, 1995). The current base rates to which the price caps plan was applied were established on July 21, 1994 and adjusted August 1, 1994. *Re Central Maine Power Company*, Doc. 94-103, 170 PUR4th 412 (July 12, 1994). Central Maine's price caps/PBR mechanism was approved, in January 1995, while the Company did not file for initial application of its price cap plan until March, 1996. This amounts to a 15 month lag from the time the Maine Commission authorized price caps' regulation, to when it was first applied to Central Maine's rates, almost 2 years from the time the starting point rates were established. *Id*., p. 413.

[5] Recognizing that price is a valid measure of service quality, the Department might also consider incorporating a Price Performance Measure within a BoGas SQI that would penalize the Company for moving farther away from the national average transportation rates. *See, San*

The City of Boston ("City") proposes a service quality measure that would require an annual sum certain be expended for system maintenance. *City Int. Br.*, p. 4. The Attorney General concurs with and supports the essence of this proposal. He suggests that an annual minimum cast iron/bare steel pipe replacement expenditure level be adopted as part of the SQI based on the Company's three year plan submitted to and approved by the Department. Such a measure should specify that the Company expend up to 95 percent of the amount committed to pipe replacement under BoGas' pipe replacement programs filed and approved the previous year by the Department.[6]

D. The Company's Price Cap Model Reduces Its Business Risk, While Guaranteeing The Ratepayers Perpetual Inflated Rates From An Inefficient Utility Company

The Company's price cap proposal and the arguments set forth in its brief indicate that the Company does not understand the underlying theory and principles of the Price Cap Performance Based Ratemaking model. Price Cap regulation is supposed to base the Company's rates on changes in relevant prices in the economy rather than using the rate of return / cost of service approach that ratemaking has traditionally used. Exh. BGC-10, p. 10. The price cap plan with the numerous add-ons that the Company proposes destroys all notions of separating this link between rates and cost of service. The productivity offsets provide the Company with guaranteed increases allowing rates to continue at levels well above those required of an efficient gas

Diego Gas & Electric Company, Doc. 94-08-023, 154 PUR4th 313, 348 (1994).

[6] See Appendix A, attached hereto. It is of note that actual cast iron pipe replacement figures fall miles short of the projections filed with the Department and used in setting its depreciation accrual rates. Exh. AG-10, 1994 and 1995 Annual Report To The Department, p. 77 and AG-17.

distribution company. The add-ons provide so many cost based loop holes to the pricing scheme that the plan simply becomes a costs plus formula rather than a price cap formula. The formula already includes exogenous cost considerations for accounting changes, tax changes, and legislative changes. Yet, the Company wants add-ons to include losses on margins from large customers, costs associated with investment for unreimbursed public works projects, and changes in the cost of equity. *Co. Int. Br*., p. 54. Each of these components adds an element of cost to the basic Price Cap formula.

These three add-ons along with the three exogenous costs changes approved in *NYNEX*, D.P.U. 94-50, essentially remove all of the operating risk from the shareholders, and place it firmly on the ratepayers.[7] Certainly, this has not been the purpose of traditional ratemaking nor should it be that of performance based ratemaking. This is especially true given the Company's proposal that the plan be in effect for a five-year period of the plan before it is to up for review. Clearly, given the opportunities pounding on the Company's door for improved productivity in the future that the QUEST plan delineates and the probability of large volume gains as a result of the marketing efforts outside marketers, the uncertainty in the Company's plan is not whether it will earn its allowed return on common equity, but rather how much more money can the Company earn over and above its cost of capital.

E. Mr. Lowry's Analysis

The Attorney General argued in his brief that the Department should reject Mr. Lowry's

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[7] If the Department finds that it is appropriate to include these add-ons to the Company's price cap scheme, it should concurrently reduce the Company's cost of equity to 100 basis points above the U.S. Treasury Bond rate to reflect the fact that essentially all of the Company's operating risk has been eliminated by the provisions of this proposal.

analysis because of the problems with the data as well as the many flaws in the analysis. The Attorney General stands by those arguments. However, the Company's statements on brief require further response.

The Company suggests that Mr. Lowry's analysis is based on publicly available USR data that was given to the Department. *Co. Int. Br*., p. 45. However, the record is clear that his analysis included data from the gas distribution companies that is not available to the Attorney General and certainly not generally publicly available. Having the Company's witness as the sole source for the information, as happened in this case, is simply inappropriate. Since this data is not readily available or verifiable, the Department should not continuously rely on Mr. Lowry analysis or results.

F. Northeast Regional Total Factor Productivity

The Company continues to argue for the use of the Northeast Region's negative change in productivity as calculated by the Company’s witness as a basis for the productivity offset for Boston Gas Company in the price cap formula. Co. Br., pp. 45-48. The notion that a utility should be allowed to incorporate *negative* productivity changes into future rates flies in the face of the purpose of regulation as well as the realities of what would happen in a competitive market. If Boston Gas Company and Massachusetts wants to stay competitive in the national as well as the international markets, it cannot rely on the Jurassic period arguments that "it is different" for a multitude of unsupported reasons based on conjecture and anecdote. The facts are that Massachusetts businesses have to compete in the national as well as the international markets. If one's costs are higher and productivity worse then other businesses, one can't compete in the market place in today's international economy.

G. The Productivity Factor Should Be Determined Using Appropriate Weightings of Customer Number and Volumes

The Company argues against using throughput volume in the determination of the productivity factor. Co. Br., pp. 48-49. Although the Company's stated position may be factually correct that customer number is the "single most important output circumstance," customer number does not *by itself* best explain cost. *Id*. Often, as in this case, two or more cost drivers can better explain the output. See Tr. 18, pp. 47-49 and Exh. AG-11, Memorandum of July 17. The Company on brief fails to address this simple statistically proven fact.

The Company suggests that Mr. Lowry appropriately eliminated volume data due to short-run demand shift bias. *Co. Int. Br*., p. 49. However, the Company is wrong here again. The statistical evidence in the record is clear. Exh. 115, p. 2, Tr. 18, pp. 52-55, and Exh. AG-RR-55. The regression results indicate that gas volume is actually less susceptible to short-run demand shifts than the number of customers.[8] *Id.* Therefore, adding volume to the analysis is appropriate as well as important since it improves the results.

H. The Company's Stretch Factor / Consumer Dividend

The Company includes a "Consumer Dividend" in its productivity factor offset to compensate for the future higher productivity gains that are expected under the price cap plan. *Co. Int. Br.*, pp. 50-51. Citing NYNEX, p. 165. However, NYNEX goes a little further and states that these improved productivity gains are a result of moving from a rate of return / cost of service regulated utility to one that more closely reflects a firm in a competitive industry. This expected change in productivity that the Department recognized in *NYNEX* was a full percentage

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[8] This is proven by the lower F-statistic from the Regression of Firm Volume to Short-Run Demand Shifts.

point. *Id*. Given the poor historical productivity performance of Boston Gas in relation to the rest of the gas distribution industry, the Department should order at least a one percent stretch factor.

I. Accumulated Inefficiencies

The Attorney General's recommenced Accumulated Inefficiencies factor of 2.25 percent is probably a conservatively low estimate of the factor that should be used in this case. The Boston Gas Company as well as the gas distribution companies in the Northeast have been inefficient as compared to the rest of the industry. A conservative extrapolation of the inefficiencies over the 1984 to 1994 period for ten more years yields this result. However, this analysis did not go far enough.

The Attorney General's calculation of the 2.25 percent accumulated inefficiencies factor assumes that the national group has been as efficient as firms in the competitive market placce. Since the companies in the national group are all substantially regulated, this assumption of competitive parity is clearly wrong. This causes the 2.25 percent Accumulated Inefficiencies factor to be conservatively low.

J. Exogenous Threshold

The Attorney General agrees with DOER that any of the exogenous costs appropriately allowable as adjustments to the price cap formula should meet the threshold dollar amount on an individual basis. *DOER Int.Br*., p. 43. Allowing accumulation of exogenous items means that these change do not have to be extraordinary in amount. The best example of this is changes in property taxes. It might be argued that the annual increase in the property tax rate is a tax law change or a governmental mandate under the Company’s proposal. If all of the municipalities in the Company's service territory increased their taxes by just 3.4 percent, the tax increase accumulated across all of the towns, while not individually or collectively extraordinary, would meet the threshold for an exogenous cost adjustment ($14,891,826 * 0.034 = $506,322). Exh. BGC-153, p. 42. Clearly, the exogenous cost adjustments should not be stretched to include this type of accumulation of costs.

K. The Company's Proposed Cost of Equity Adjustment must Be Rejected

The Company suggests that its proposed cost of equity provision in the price cap formula is necessary, among other reasons, to ensure the financial integrity of the Company. *Co Int. Br.*, p. 67. The Company argues that the adjustment only relates to the level of rate base at the "cast off" point, thereby burdening the Company with the risks associated with the new investments in plant. *Id.*, p. 68. Both of these arguments are simply wrong and demonstrate the Company's misapplication of price cap principles, all to the shareholders' benefit.

The price cap methodology is supposed to change a utility from being cost plus driven to being a price taker like companies in a competitive market. Exh. DOER-70, pp. 5-6. Adjusting the price cap formula for changes in the cost of equity will destroy this underpinning of the methodology and the incentives it is supposed to create. For this reason alone the Department should reject the Company's proposal.

The Company's threats of loss of financial integrity as a result of not having the equity adjustment should not be entertained by the Department. *Co.Int. Br.*, p. 67. First, even as proposed, the term of the plan is only five years and therefore, any loss due to changes in costs would be short-lived. Second, an earnings sharing provision would essentially eliminate the chance of the loss of financial integrity. See Earnings Sharing, *infra*. Finally, the Company assumes that a change in the cost of equity, by itself will go right its bottom line. Of course, this is not true since (1) the GDP-PI will to some extent pick up changes in the cost of money, (2) a change in the cost of equity can be mitigated with changes in the Company's capital structure, by raising the relative proportion of preferred stock and / or debt to lower the overall cost of capital, and (3) other (non-capital related) costs can be reduced to mitigate any effects of the change in the cost of equity. Thus, the Company shrill cries that its financial integrity is at stake is simply false.

The Company's proposed cost of equity adjustment picks one element of the cost of capital for adjustment while incorrectly assuming that the other cost components appropriately reflect their costs. Again, under price cap theory, the Company should be a price taker, and not a cost plus maker. However, if the Company is going to adjust one of its capital costs associated with the "cast off" point rate base, it should be required to adjust all of those capital costs.

The cost of equity adjustment that the Company proposes backs out changes in the implicit cost of equity recovery associated with the price cap adjustments. However, the adjustment does not back out the *extra* compensation associated with the inflating the embedded cost of depreciation and the costs of debt and preferred stock associated with the "cast off" rate base. The embedded cost of depreciation, debt and preferred stock associated with the "cast off" point rate base will not change over time. However, the compensation for these embedded costs implicit in the price cap revenue requirement assumes that they increase over time at the rate of inflation minus the productivity factor. Therefore, if the Department allows adjustments to the price cap formula for changes in the cost of equity for the "cast off" point capital cost, it must also reduce the adjustment for the extra compensation that the Company is receiving over the embedded costs of depreciation, debt, and preferred stock.

For all the reasons discussed supra, the Department should reject the Company's proposed cost of equity adjustment to its price cap formula. Furthermore, if the Department allows such an adjustment, then the corresponding implicit costs of depreciation, debt, and preferred should be adjusted to reflect their lower true costs.

L. Earnings Sharing

The Company's opposition to an earnings sharing adjustment is unfounded. Co. Br., pp. 70-73. First, an appropriately structured sharing mechanism will provide the Company with more than enough incentive to improve its performance. Id., p. 70. Like with the Attorney General's proposed sharing mechanism, the Company will have strong incentives to earn more money, since the more it earns, the greater the share over the dead band it gets to keep. Second, the addition of an earnings sharing mechanism will not burden the Department with new procedures, since the earnings sharing calculation should be a formulaic part of the annual price cap adjustment. Co. Br., p. 71. The price cap calculation along with the litigation of the exogenous costs already require administrative hearings, so that the addition of a pre-established formula will not cause any substantial regulatory burden. Third, the addition of the earnings sharing will not "destabilize" rates since the adjustment will be part of the annual price cap filing, *Co. Int. Br.*, pp. 71-72. It will become effective with and mitigated by the price cap change plus or minus the exogenous costs. Fourth, it is interesting to note that the Company is not concerned about the destabilizing effects of the inflation and exogenous parts of the annual rate changes. It is only disingenuous to argue that an earnings sharing adjustment will cause such "destabilization."

Finally, although earnings sharing does not fit perfectly into the price cap theory, it is clear from the record that the economic, financial, and accounting parameters of the proposed price cap plan don't fit either, since they are largely unknown and probably in flux for the industry during the term of the plan. Earnings sharing is clearly appropriate at the start of such a PBR plan, when so many factors are unknown.

M. Depreciation Flexibility

The Attorney General agrees that the Company should have flexibility to change depreciation accrual rates on assets that are not part of the gas distribution business and are not charged back directly or indirectly to the gas distribution business. Id., pp. 73-74. Otherwise, all changes in those accrual rates should be approved by the Department.

N. The Attorney General's Recommended Price Cap Formula Components

The testimony and exhibits in the record provide evidence to establish the initial parameters for the price cap formula in this case. The price cap formula contains the following elements:

$$) P = I - [(TFP_{gas} - TFP_{us}) - (IP_{gas} - IP_{us}) + SF + AI$$

where

I	=	Inflation Factor
TFPgas	=	Total Factor Productivity for the Gas Industry
TFPus	=	Total Factor Productivity for the US Economy
IPgas	=	Input Price Index for the Gas Industry
IPus	=	Input Price Index for the US Economy
SF	=	Stretch Factor
AI	=	Accumulated Inefficiencies

Exh. BGC-5, p. 3.

The Attorney General recommends that the Company use the following values for these elements.

The Inflation Factor should be the Gross Domestic Product Implicit Price Index as requested by the Company. Exh. BGC-3, pp. 11-13. The Total Factor Productivity for the Gas Industry should be that calculated for the national gas distribution industry for the longest period possible (e.g. 1984-1995) with appropriate weights for volumes as will as number of customers.. Exh. AG-RR-24 . The Total Factor Productivity for US Economy should be that for the Non-Farm Sector for the corresponding period. Exh. AG-RR-53. The Input Price Index for the Gas Industry should be that calculated for the national gas distribution industry for the corresponding period. Exh. BGC-10, Table 1. The Input Price Index for the US Economy should be that for the Non-Farm Sector for the corresponding period. Exh. AG-RR-53. The Stretch Factor should be 1.0 percent. *NYNEX*, D.P.U. 94-50, pp. 165-166 (1995); *AG Int. Br*., pp. 21-22 . The Accumulated Inefficiencies Factor should be 2.25 percent. *AG Int. Br.*, pp. 23-24. As argued here, and in the Attorney General's Initial Brief, these values that the Department should order, since they provide the best measures of these parameters based on the record evidence in this case.

IV. QUEST Project

Given the multi-faceted nature of the Company promoted QUEST project it is vital that the Department comprehend the true nature of the project so that the costs can be properly allocated. While there may be some argument that it is fair for consumers to pay their share of QUEST costs that relate to, and have generated savings, as a result of the Company's downsizing efforts, the Department must reject BoGas argument that consumers pick up the entire QUEST tab even though the lion's share of the QUEST benefits are going, or will go, to shareholders. *Co.*

Int. Br., pp. 95-97.

The Company attempts to support its position by continuing to assert, through self-serving statements of Company managers, that QUEST was, first and foremost, conducted to improve service quality. *Co. Int. Br*., p. 95. As will be explained *infra*., the facts belie that assertion. A fair reading of the Phase I report, RR-AR-1, shows that virtually the entire focus was identification of over 50 business "opportunities" and productivity enhancement measures. These measures were (in the words of the consultant, Delloitte and Touche's RFP response) prepared to guide the Company into this new world of PBR, increased competition and changing business environment. Exh. AG-252, p. 5; RR-AG-1; *see also, AG Int. Br*., Appendix A. Moreover, Delloitte and Touche said the purpose of the QUEST project was "to prepare the company for future growth, operational efficiency, *increased* customer service,[9] and new business development." (emphasis provided) Exh. AG-252, p. 5. *Increased* customer service offerings is not *improved* service quality, as the Company would have the Department believe. *Co. Int. Br.*, p. 98.

The QUEST consultant costs, *see* Exh. BGC-39, p. 27, and RR-AG- 13 & 37, which the Attorney General seeks to have disallowed primarily relate to business "opportunity" research and reporting expenses.[10] Tr.. VIII, pp. 137-140; Tr.. XV, pp. 9-11. Shareholder assumption of

[9] It is noteworthy that the winning consultant did not even state that improved quality of customer service was to be pursued, but focused their analysis on how to increase services and service offerings to customers. This statement is telling because it directly contradicts the BoGas "spin" that the main focus of QUEST was to improve the quality of customer service.

[10] Though the Attorney General seeks disallowance of these QUEST costs on the basis that they failed to serve any ratepayer-related function (the opposite being argued by BoGas), the Attorney General also recognizes that after the Department makes its adjustments to QUEST expense levels an issue of the recoverability may present itself. Particularly at issue may be

these consulting costs is a fair and equitable allocation of the benefits that are, and will, flow from the QUEST reengineering and business opportunity identification efforts[11]. Under a price caps scheme, even with adoption of a meaningful productivity offset, unlike that proposed by BoGas, the Company, with its QUEST manual in hand and paid for, will be well positioned to make (and keep) the significant revenues generated by implementation of QUEST'S many business opportunities. Hence, shareholders should also bear their fair share of the QUEST costs, the consultant costs: $3,527,222.[12]

A. The QUEST Costs Pursuant To Department Precedent Must Be Reduced By QUEST Savings

The Company argues to recover from the rate payers *all* costs of the QUEST Program; but deny the ratepayers a substantial portion of the benefits. It seeks to recover the full amount of the costs, $7,692,839, amortized through its rates to provide full compensation to the Company's

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whether the remaining nonrecurring expenses are sufficiently extraordinary to warrant recognition and collection by amortizing them over an appropriate time period pursuant to established Department precedent. *NYNEX Order*, D.P.U. 94-50, p. 324 (1995) citing: *Fitchburg Gas and Electric Light Company*, D.P.U. 1270/1414, p. 33 (1983) and *Boston Edison Company*, D.P.U. 1720, p. 89 (1989). The Attorney General asserts that the QUEST expenses are non-recurring and hence any expense balance under $1,000,000 is not so extraordinary in nature or amount as to warrant amortization. *See*, *Western Massachusetts Electric Company*, D.P.U. 85-270, p. 153 (1986), where the Department found a $998,000 non-recurring expense to be not extraordinary for a company with $225,000,000 in revenues.

[11] The Department has, on occasion, allowed recovery of consultant costs (that were neither recurring nor nonextraordinary) where such costs provided direct benefits to ratepayers. See, *Cambridge Electric Light Company*, D.P.U. 92-250, p. 102 (1993). Here, however, the QUEST consultants primary work product, the Phase I, II and III reports, were designed to directly benefit shareholders by allowing them to capture employee downsizing and restructuring savings in 1995 and 1996, and also providing the Company a manual for operating under a price caps scheme.

[12] See Appendix C.

shareholders over two years. *Co. Int. Br.*, p. 96.[13]

The Company has made an adjustment to annualize the impact of QUEST on wages, salaries and benefits associated with some of the positions eliminated by the Company beginning in October, 1995. Exh. BGC-39, p. 17. The Company would have you believe that through this QUEST Wage and Salary adjustment it is capturing the total benefit to the rate payers of the QUEST Program. Co. Int. Br., p. 96. This wage and salary adjustment has nothing what-so-ever to do with the recovery of the cost of the QUEST Program. It is simply an appropriate annualization of a known, measurable and substantial decrease to test year expenses. *See*, *Cambridge Electric Light Company,* D.P.U. 92-250, p. 34 (1993); *Massachusetts Electric Company,* D.P.U. 89-194/195, p. 19 (1990) and *Nantucket Electric Company*, D.P.U. 88-161/168, p. 66, (1989). The Quest Wage and Salary adjustment is necessary to correctly reflect the salary and benefit level the Company is expected to carry during the period the rates will be in effect.

What the Company chooses to do is to ignore the correct offsetting savings to the cost of the QUEST Program. *Co. Int. Br*., pp. 103-104. These offsetting savings are the benefits captured by the Company's shareholders during 1995 and 1996 that under Department precedent now must be used to reduce the cost of QUEST before any such costs can be collected from ratepayers. *Massachusetts Electric Company*, D.P.U. 92-78, pp. 47-48 (1992). These offsets are the savings in wages, salaries payroll taxes and benefits which have occurred during the test year

[13] It should be noted that the Company has designed its filing in such a manner that the requested rates will be in effect for five years and will increase annually through the application of the price caps scheme. The Company has not chosen to adjust the base revenue requirement after the second year for the elimination of this amortization expense.

and during 1996 and are the amounts that the Attorney General seeks to include as an offset to the QUEST costs. *AG Int. Br*. pp. 38-39. These are the savings that have gone directly to the benefit of the Company's shareholders during 1995 and into 1996, and will continue to do so as long the current rates are in effect (at least through December 1, 1996).

It is both unreasonable and inappropriate for the Company to seek recovery of an extraordinary, nonrecurring expense such as the QUEST Program without also passing the full benefit of all associated savings through to the rate payers. AG Int. Br., pp.38-39 The Attorney General seeks to correct the Company's apparent oversight. This correction is accomplished by netting the 1995 and 1996 (13 months, October through November) QUEST personnel related cost reductions from the full amount of QUEST costs:

Amount to be used to offset recoverable QUEST Costs:

Wages, Salaries, Benefits and Payroll Taxes(See, Appendix B)

a.) Retirements (permanent)	$7,832,665
b.) Other Retirements (unfilled)	1,264,114
c.) Other Retirements (filled)	504,663
	$9,601,413

The Attorney General proposes other adjustments to QUEST costs which will further reduce the burden to the ratepayer. The Department must offset what it determines as the recoverable portion of the QUEST program costs by the above benefit. Furthermore, as noted in his Initial Brief, the Attorney General urges the Department to amortize the net cost over the full PBR period of five years. *AG Int. Br.,* p.40.

V. Quality of Service

A. Notwithstanding Company Protests The Department Should Sanction BoGas For Its Poor Service Quality And, At A Minimum, Reduce Its Revenue Deficiency By The Company's Three Year Average Of Its Billing Adjustments

The Company does not contest that it continues to be the most complained about gas company in the state, nor does it contest the fact that it serves 40 percent of the states gas customers and receives 58 percent of all customer complaints lodged against the states' gas companies[14]. Exh. AG-112, p. 9. This statistic is down only 2 percent from its standing as the most complained about LDC at the time of its last rate case. *Boston Gas Company*, D.P.U. 93-60, *AG Reply Br*., p. 2, citing Department Consumer Division Statistics. The Company proudly

[14] The Company has held this dubious distinction continually since, at least, 1991. *Boston Gas Company*, D.P.U. 93-60, *AG Int. Br*., pp. 6-8 and *AG Reply Br*., pp. 2-4.

points to this “improvement” as “resulting from a lot of hard work and concentrated effort on the part of the entire Company”. *Co. Int. Br*., p. 107. The Attorney General does not agree that a such a record constitutes “improvement” or is something the Company should take pride in.

The Attorney General has found that one prominent comparative measure of how well a company is administering the Department’s Billing and Termination Regulations, 220 CMR § 25.00, are the amounts that are stricken from customers’ bills as a result a company’s malfeasance, misfeasance and nonfeasance in its handling customer complaints, as tracked by the Department’s Consumer Division Bill Adjustments statistics. When the Company’s record for the compliance on this measure is examined, one sees that for all but the test year, (statistics for 1996 being incomplete) the Company out paced or tied the two largest utilities in the Commonwealth, Boston Edison Company (“BECo”), a utility twice its size in annual revenues and NYNEX, state-wide utility with over 6,000,000 lines/customers. *See*, 1995 Annual Reports to the Department for Boston Edison Company and NYNEX.

In 1993 BoGas had $154,500 worth of its billing revenues abated (compare: BECo - $159,800 and NYNEX - $40,700) and in 1994 BoGas recorded $279,500 of billing abatements (compare: BECo -$173,800 and NYNEX - $22,800). As the Company proudly asserts in its initial brief - its customer service quality is improving because in the test year it was required to abate only $74,800. *Co. Int. Br*., p. 108. This improvement, however, due to the fact that BoGas had an incredible $434,000 in customers billings abated in the prior two years. Exh AG-112.

When compared with the *combined* total complaints and billing abatements of the next three largest Massachusetts LDCs, BoGas rates equally as poor. These LDCs include Bay State

Gas Company, Commonwealth Gas Company and Colonial Gas Company[15] whose combined service areas have a mix of older urban and suburban communities and serve approximately 110,000 or 20 percent more customers than BoGas. 1995 Annual Returns To The Department. Yet, the Company's 1995 billing adjustment's were 2.25 times ($74,800 / $33,500) the combined total of billing abatements of these three LDCs [16].

Though the Company feels it is making improvements in customer service quality, Department statistics show they are still a very long way from comparability with other LDCs and continue to struggle to attain a reasonable level of compliance with Department billing and termination regulations[17]. BoGas remains one of the most complained-about utilities in the state.[18]

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[15] These LDCs combined served approximately 650,000 customers in 1994 compared to BoGas' 540,000. *1994 Annual Reports To The Department of Bay State Gas Company, Colonial Gas Company and Commonwealth Gas Company*; Exh. AG-118, Annual Report To The Department of Boston Gas Company.

[16] The partial 1996 statistics are inconclusive regarding current year's levels.

[17] As the Company has in the past, it has introduced a survey of a certain few of its customers and trade allies that its employees and its pollster has conducted, scripted and been paid to conduct. The results of these surveys may serve the Company's marketing and image improvement efforts well, however, their outcome is predictably biased in the Company's favor and of little use to determine how well the Company's actually serves its customers. Indeed the Company's Marketing Vice President has such little faith in them, that he would not have customer surveys included in the Company's SQI. Tr. XVI, pp. 235-236; Exh. DPU-36, p. 2. Accordingly, the Department should accord the Company's conclusions drawn from the so called Walker Surveys, little or no weight. *Compare: San Diego Gas & Electric Company,* 94-08-023, 154 PUR4th 313, 350 (1994), where the SQI contains a Customer Satisfaction Indicator utilizing responses from an audited, neutral 3rd party conducted survey of over 10,000 customers. The measure utilizes a 92% "very satisfied" customer response as a benchmark.

[18] The test year may be indicative of a downward trend (though it may be an anomaly that one often sees at or around the time of BoGas' rate case filings), an appropriate reaction to management's concern over so much lost revenues or, as QUEST results indicate, the Company's need to improve its customer relations/image if it expects to successfully market its expanding list of non-gas services to customers, *e.g.*, white appliance insurance, expanded service plans and

The Company was warned in its last rate case that investigations and possible sanctions would follow. The Department should follow the recommendation of the Attorney General, as set forth in his initial brief, to reduce BoGas' test year revenues by $169,606. *AG Int. Br*., p. 76.

VI. Rate Base

A. The Company's "Cast Off " Post Test Year Rate Base proposal Violates Department Incentive Regulation Order By Seeking Changes In Precedent And Therefore Should Be Denied

The Company in its initial brief continues to seek special treatment for a number post test year adjustments to rate base that the Company acknowledges is contrary to established Department ratesetting principles. *Co. Int. Br*., p. 93. The Department in its *Incentive Regulation Order* specifically noted that PBR proposals were to be presented so that they conformed with existing Department regulations and precedent. *Incentive Regulation*, D.P.U. 94-158, p. 58. Indeed, the Department has instituted an initial price caps scheme in the *NYNEX Order* where, consistent with its *Incentive Regulation Order,* it applied traditional test year ratesetting principles and precedent in its review of NYNEX's cost of service and rate base. *NYNEX Order*, D.P.U. 94-50, June 14, 1994 Interlocutory Order, p. 22. By contrast the Company, herein, seeks to have the Department to totally restructure its approach to rate base and cast aside fundamental ratesetting principles. *Co. Int. Br*. pp. 93-95.

The Department should deny this request to expand the scope of transition filings such as herein. Surely the concern expressed in D.P.U. 94-158 was founded in the observation that other utilities in Massachusetts, including a number of other LDCs that will be moving to a PBR form of regulation and there is a need to maintain consistency in regulatory treatment. This is most

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furnace tuneups. RR-AG-1, p. 69.

efficiently accomplished by retaining and applying established historic test year ratesetting principles to the traditional test year or transitional "cast off" period.

Even though the Department has "noticed" its intention to move to a PBR form of regulation, it has informed the companies that Department regulations and ratesetting standards should continue to be observed. Consequently, the Department should decline BoGas' invitation to radically change the timing of rate base calculation. *See, Boston Gas Company vs. Department of Public Utilities*, 367 Mass 94, 104 (1975) ("A party to a proceeding before a regulatory agency such as the Department has a right to expect and obtain reasoned consistency in the agency's decisions.")

B. The Company's Post Test Year Additions Adjustment Would Provide Double Recovery For Plant Additions

In spite of BoGas's mock amazement in its initial brief, the Company is well aware that its future test year-styled, nonrevenue producing additions adjustment would allow them to over-recover for its cast iron pipe replacement program. *Co. Int. Br.*, p 93. In summary, this proposal to adjust for forecast nonrevenue producing plant additions would, if allowed, constitute: (1) an asymmetric adjustment[19] - shareholders would keep the entire proceeds from revenue generating pipe additions (Exh. BGC-38, p. 5.) while ratepayers pay for the nonrevenue producing additions to plant; (2) double recovery for cast iron pipe removal costs - the cost of the Company's pipe replacement program maintained a prominent position in its D.P.U. 93-60 depreciation study and contributed to the abnormally high depreciation rates that the Company sought and received in its

[19] The Company's only retort on the issue of the asymmetric nature of their proposal is to state that the revenue producing additions are discretionary investment. Co. Int. Br., p. 94. It fails to note that as with any system plant additions revenue producing additions are paid for by ratepayers and become part of distribution plant that is serviced and maintained by the ratepayers.

last rate case[20]; and (3) improperly recovered at a test year end level - generally future test year adjustments are based of an average year level as opposed to a test year end level proposed by the Company.

As set forth in the Attorney General's Initial Brief, the Company's post test year non-revenue additions proposal is fatally defective as bad policy, contrary to established precedent and unfair to its ratepayers. The proposed addition of $28 million adjustment to test year rate base should be denied. Exh. BGC-38, p. 13.

VII. Cost of Common Equity

A. Introduction

The Company's cost of common equity analyses is nothing more than a rehash of the same old cost of equity analyses that the Department has rejected time and time again for Boston Gas Company and many other utilities in this state. *See e.g.*, *Boston Gas Company*, D.P.U. 93-60, pp. 239-267 (1993); *Cambridge Electric Light Company*, D.P.U. 92-250, pp. 132-162 (1993); *Berkshire Gas Company*, D.P.U. 92-210, pp. 109-156 (1992); *Bay State Gas Company*, D.P.U. 92-111, pp. 229-282 (1992); *Boston Gas Company*, D.P.U. 88-67, pp. 174-200 (1988). In fact, the Company admits that it is the same old analyses in its initial brief, when it stated that "Mr. Moul's study of the Company's cost of common equity capital was similar to studies he has done for Boston Gas in prior rate cases." *Co. Int. Br*., p. 128. Mr. Moul has not provided any new

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[20] The Company stated that it failed to find the evidence cited by the Attorney General in support his assertion that the Company, in part, based its last depreciation rate increase on a need to cover the cost of its pipe replacement program. *Co. Int. Br*., pp. 94-95. BoGas is apparently unaware of the contents of its own depreciation study, upon which it relied in D.P.U. 93-60, and here as well. Attached hereto as Appendix A is a copy of the memo included in Mr. Aikman's depreciation study along with other support papers (Exh. AG-55) that he and the Company relied upon to support its mains and services depreciation accrual rate adjustments.

evidence in this case that should cause the Department to change its well founded views on his analyses. He has attempted, however, to put some new spins on some of his old approaches, that amount to nothing more than window dressing on a faulty analysis. The Department should therefore reject Mr. Moul's analyses and his results.

Notwithstanding the fact that Mr. Moul's cost of equity analyses have been rejected in whole by the Department in the past, there are arguments in the Company's Brief that the Attorney General believes require a response.

B. Risk Comparisons

First, the Company indicates that Mr. Moul chose such a high cost of equity, or 12.5 percent, due to its overall increased business risk. *Id.*, pp. 129-131. This adjustment is redundant, since investors should have already considered these factors when making their investment decisions. Furthermore, the alleged change in business risk affects the other companies in Mr. Moul's group of comparable companies that he used to determine the cost of common equity. Therefore, any adjustment to the cost of equity results based on market indicators would simply artificially inflate the cost of equity for the Company.

Second, the Company argues that Boston Gas Company is riskier than Mr. Moul's comparison group. *Id.*, pp. 130-131. Since the Company proposes to divest itself of its commodity operations, the area of its greatest risk, Mr. Moul's claims ring hollow. If anything, after Boston Gas' exit from the merchant function, it will be less risky than the comparison group. However, the Company's overall investment risk (which is made up of both its business risk as discussed, *supra*, and financial risk) is not higher than that of Mr. Moul's comparison group. The Company's claim that its more highly leveraged capital structure causes it to have a higher financial risk is incorrect. The Company had a 46.7 percent long-term debt ratio for 1995 which is only slightly higher than the 1995 long-term debt ratio for Mr. Moul's comparison group of 45.9 percent. Exh. AG-72; Exh. AG-73. Moreover, its proforma debt ratio that it uses in its revenue requirement calculation is 46.24 percent. *Co. Int. Br.*, p. 126. Thus, the financial risk differential is insignificant, and any adjustment to the cost of equity for this difference would be insignificantly small.

Further to the issue of financial risk, the Company fails to compare Boston Gas to Mr. Moul's Barometer Group regarding other key elements of financial risk. In regard to each of the following financial statistics, Boston Gas statistics are significantly better than those of the Barometer Group indicating Boston Gas' lower financial risk (Boston Gas v. Barometer Group): Effective Income Tax Rate (39.1 percent v. 35.6 percent); Internal Cash Generation/Gross Construction (96.2 percent v. 75.1 percent); Gross Cash Flow/Permanent Capital (15 percent v. 13 percent); and Common Dividend Coverage (5.6 percent v. 2.6 percent). Exh. AG-72; Exh. AG-73. These are all key indicators of a company's financial. Upon comparing those statistics of Boston Gas versus the Barometer Group, it is clear that Boston Gas has lower financial risk.

Third, the Company claims that the move from cost-of-service regulation to performance-based regulation ("PBR") is a factor which heightens its business risk profile. *Co. Int. Br.*, pp. 129-130; *citing*, Exh. BGC-56, p. 2. However, the Company has not proffered any evidence that a switch to a PBR-type mechanism in fact creates any greater risk. To the contrary, the Company still maintains its monopoly franchise. The only unknown factor is how much more, not how much less, money the Company will earn. If anything the Company's cost of equity will decrease after this case as a result of it shedding the risks associated with the sales portion of its business which makes up 56 percent of total revenues ($375,202,673 / $662,892,583 = 0.56). Exh. BGC-153, p. 1. In fact, even Mr. Moul agreed that once an LDC sheds its gas procurement responsibilities, as Boston Gas is proposing in this case, its business risk would decrease. Tr. Vol. XI, pp. 12-13. Therefore, the Company's reliance on the Comparable Earnings approach, due to its proposed move from cost-of-service regulation to performance-based regulation (*Co. Int. Br*., pp. 128, 139-140), is unjustified.

Upon further review of all of the business risks that the Company claims heightens Boston Gas' business risk profile, the Company has not proven that the risk to its business exceeds the risk to the comparable group of companies. *Co. Int. Br.*, pp. 129-130. These other companies, in fact, face the same problems as Boston Gas Company, *i.e.*, the alleged price disadvantage of natural gas over fuel oil; the significant amount of weather sensitive throughput; cast iron infrastructure; etc. Furthermore, the Company did not provide a comparison of any of these "business risks" between Boston Gas and the comparable companies. Absent such record evidence, one must assume that their business risks are comparable.

C. Discounted Cash Flow Analysis

The Company stated that the Attorney General was incorrect in his statement that the Company's calculation of the dividend yield is based on a "spot price". *Co. Int. Br.*, p. 132. Instead, the Company claims that Mr. Moul calculated the dividend yields based on "month-end" prices. *Id*. However, the Company misses the point that a "month-end" price is a spot price because it is the price at a specific spot in time, *i.e.*, the month-end, and therefore is subject to the peculiarities of that particular day.

Further to the Company's criticism of the Attorney General's dividend yield, the Company claims that the Attorney General has double counted the dividend yield for the last six months because the last twelve-month yield already contains the yield for the last six-month period. *Co. Int. Br.*, pp. 132-133. However, this is untrue. The Attorney General did, appropriately, give the most recent six-month period more weight but did not "double count" the dividend yield for the last six-month period. *AG Int. Brief.*, pp. 51-52.

The Company criticizes the Attorney General for excluding the Value Line earnings growth forecast of 5.86 percent. *Co. Int. Br.*, p. 134. However, Department precedent is clear that if a company uses earnings per share growth forecasts, it must use a *consensus* forecast, which the Value Line forecast is not. *New England Telephone and Telegraph Companies*, D.P.U. 86-33-G, pp. 354-356 (1989). While Value Line represents one forecast, Standard & Poors and IBES are a consensus of many forecasts. Included in consensus forecasts are several forecasts that the publication (S&P or IBES) polls. It is likely, although there is no record evidence either way on this matter, that these consensus surveys include a Value Line forecast. Therefore, to include a non-consensus forecast like Value Line in this calculation would be inappropriate and probably result in double counting Value Line's forecast.

The Company also claims that the Attorney General did not consider growth in dividends per share in calculating the DCF growth rate. If you consider the five-year historical dividends per share growth rate of 2.71 for the barometer group and the five-year forecasted dividends per share growth rate of 2.29 percent for the barometer group, these numbers are substantially lower than the Attorney General's recommended growth rate of 3.58 percent. Exh. AG-76; Exh. AG-77; *AG Int. Brief*, p. 55. Therefore, the Attorney General's recommendation is conservatively higher than the historical and forecasted dividends per share growth rates.

The Company states that the Attorney General "makes the assumption (without proof) that investors assume that the value of a common stock will grow over time at the lowest possible growth rate". *Co. Int. Br.*, p. 135. The Company's claim that the Attorney General chose the "lowest possible growth rate", the Company is wrong. As noted in the Attorney General's Initial Brief, he chose the midpoint of the range, or 3.58 percent, which represents the growth for retained earnings and the forecasted earnings per share. *AG Int. Brief*, pp. 52-55.

D. Risk Premium Analysis

Even though the Company claims that, contrary to the Attorney General's assertion, Mr. Moul's risk-premium analysis did not rely solely on beta to quantify the difference in risk between the larger universe of equities, he did not "rely" on the eight different measures of risk as the Company seems to imply. *Co. Int. Br.*, pp. 138-139. While Mr. Moul may have looked at these eight different measures of risk, ultimately, his calculation is based on beta alone. Exh. BGC-56, pp. 4-5. The reference made by the Company to 88 percent of the risk premium of the S&P utilities is the ratio of the barometer group beta to the S&P Utility beta. *Co. Int. Br.*, pp. 138-139; Exh. BGC-56, p. 5. This is clearly a reliance by Mr. Moul on beta in his risk premium analysis.

E. Comparable Earnings Analysis

The Company is correct that Mr. Moul did base his Comparable Earnings analysis on six indicators and not three as the Attorney General noted in his brief. *Co. Int. Br.*, p. 139; *citing, AG Int. Brief*, p. 64. However, this correction does not change the fact that the Department has resoundingly rejected the use of the Comparable Earnings approach time and time again and should continue to do so. *Boston Gas Company,* D.P.U. 93-60, pp. 265-266 (1993); *Cambridge Electric Company*, D.P.U. 92-250, p. 160-161 (1993); *Bay State Gas Company*, D.P.U. 92-111, pp. 280-281 (1992); *Berkshire Gas Company*, D.P.U. 905, pp. 48-49 (1982).

Finally, one of the indicators Mr. Moul uses shows the comparison group of Value Line companies is of higher risk than that of the Barometer Group of gas distribution companies. In fact, the Barometer Group has a better Safety Rank, Price Stability, and Beta than those of the Value Line comparison group of companies. Exh. BGC-56, Schedule 4, p. 1. Furthermore, the DCF Cost of Equity analysis that Mr. Moul performed for the Value Line comparison companies is so flawed as to be totally useless for a comparable earnings analysis. Mr. Moul uses spot dividend yields that have been rejected by the Department, as discussed *supra*. Mr. Moul also uses five-year expected earnings per share growth rates as proxies for the DCF growth rate that are clearly so high as to be meaningless for any realistic DCF analysis using a constant growth rate assumption. *Id.*, Schedule 4, p. 3; Tr. XI, pp. 21-24.

F. Conclusion

In regard to the quality of its credit, the Company provided testimony in its initial brief that:

> if the Attorney General's recommended 9.36% cost of common equity was used, the Company's coverage ratio would fall and its ratings would drop into the BBB category.

Co. Int. Br.., p. 141. However, this statement is totally unsupported by the record in this case and should therefore not be considered by the Department in rendering its decision.

The Company shows its basic lack of understanding of the cost of capital when it states that the Attorney General's recommended return on common equity of 9.36 percent is unreasonable because it is only one percentage point higher than Company's cost of debt (8.12%)

and almost two percentage points lower than the lowest return on equity allowed Boston Gas, or any other gas utility for more than twenty years. *Co. Int. Br.*, pp. 131-132. The Company's test for reasonableness is an "apples and oranges" comparison and is totally irrelevant. With current low debt costs, a more relevant comparison of the Attorney General's recommended cost of common equity (*i.e.*, 9.36 percent) is the cost of the Company's recent preferred stock issue that went off at 6.62 percent. Exh. BGC-56, Schedule 11. Since the cost of equity (including preferred equity) is generally considered to be greater than the cost of debt, the most recent cost rate for the Company's preferred stock would provide a conservatively high estimate of the cost of debt for the Company. Thus, the Attorney General's cost of common equity recommendation includes at least a 274 basis point premium over the current cost of debt for the Company (936 - 662).

G. Summary and Recommendation

For the reasons stated herein and in the Attorney General's Initial Brief, the Department should reject the analyses and recommendations of Mr. Moul and instead adopt the Attorney General's approach and his recommended 9.36 percent return on common equity.

VIII. Revenue and Cost Of Service Adjustments

A. The Company's Argument That The Several Terminating Amortizations Should Be Subject To An Ebb and Flow Allowance Is Misplaced

The Company argues that because the several terminating amortizations mentioned in the Attorney General's Initial Brief at pages 77-78, have received ratemaking treatment as regularly recurring expenses they now should be forever memorialized in BoGas' cost of service under the rouse that the level of these expenditures "ebbs and flows" like employee and customer levels. *Co. Int. Br*., pp. 118-119. The Company misses the mark (and is clearly reaching) when it equates employee levels, a basic expense that waivers day-to-day, year-to-year, within a range, with periodically recurring expenses, such as tank repairs, that may, or may not, be experienced in a year or for a period of years but do occur from time to time. These periodically recurring expenses are made subject of amortization when they are of an "extraordinary" amount and fall within a test year. The cost is amortized over the anticipated life of the project. *Commonwealth Electric Company*, D.P.U. 89-114/90-331/91-80 Phase I, p. 152 (1991); *Fitchburg Gas and Electric Light Company*, D.P.U. 1270/1414 (1983).

The Company's position on this issue defies logic. Not only has the Company failed to cite any relevant and direct precedent in support of its position, it has the gall to ask Department approval of approximately $1.3 million of expired/expiring expenses because some level of that amortizable expense *may* occur in the future. Here, several of these periodically recurring expenses have termination dates for their amortizations that have either already ended or will end in 1996. Exh. AG-142, p. 6, Acct.118-109. The Company has not made the requisite showing that these expenses will recur in the future. *See, Fitchburg Gas and Light Company*, D.P.U. 1270/1414, p. 33 (1983); *c.f., Western Massachusetts Electric Company*, D.P.U. 86-280-A, pp. 97-99 (1987), where a lease expense that did not last for the duration of the rate year was disallowed. Therefore, these expense should be considered nonrecurring.

Moreover, the rate principle of "ebb and flow" was not designed to cover fictitious circumstances or be employed for conveniently as part of the Company's future test year proposal. Hence these amortization amounts should be removed from the test year cost of service, as known and measurable changes, because their recurrence and level of cost is, at best, speculative. They include $149,857 for Salem tank repairs, $333,333 for Boston property taxes, $210,451 for undepreciated SNG costs and $598,139 for the recovery of the deficiency in accumulated deferred income taxes. *AG Int. Br.*, pp. 73- 74, 81-82.

B. Company Unrefilled Positions Adjustment Is Appropriately An Ebb And Flow Issue

The Company has failed in both its testimony and initial brief to support its rational for excluding from its downward Wage and Salary adjustment the 17 of the "22" positions or full time equivalent employee positions ["FTEs"]) that remain unfilled as of mid year of the post test year period. Exh. BGC-39, pp. 15 and 17. Department precedent sets company employee levels at test year end levels based upon the well established rational that employee levels ebb and flow on a day-to-day basis so that test year end is deemed a representative level. *Cambridge Electric Light Company*, D.P.U. 92-250, p. 34 (1993); *Massachusetts Electric Company*, D.P.U. 89-194/195, p. 19 (1990) and *Nantucket Electric Company*, D.P.U. 88-161/168, p. 66, (1989).

The Company in its initial brief has provided no persuasive reason why Department precedent should not be consistently applied in this instance. The Attorney General's adjustment should reduce the Company's proforma wages and salaries, along with QUEST severance and enhanced retirement expenses, by $950,000.

C. The Proposed Overtime Adjustment Is Speculative And Unrepresentative Of Reasonably Expected Levels

The Company proposes to adjust its test year level of overtime based on unsupported claims of its management that overtime is sensitive to the weather in certain times of the year, even though the year ends up being colder than normal. *Co. Int. Br.*, p. 119; Exh. BGC-99.

BoGas then suggests that the last five years overtime levels will be representative of the next five years - a period in which they intend to further reduce employee levels and increase productivity. Exh. BGC- 53. As noted in the Attorney General's Initial Brief, there are a number of plausible explanations for the test year decrease in overtime other than that suggested by the Company: *e.g.*, fewer employees, increased worker efficiency when facing an imminent downsizing and the introduction of productivity measures.[21] Indeed, fewer employees and the introduction of efficiency and productivity enhancements, provide a more plausible explanation for the test year reduction in overtime than does the weather. Moreover, the Company has failed to provide any direct evidence or analysis to support the self-serving testimony of its management officials that during the first quarter of 1995 weather was the sole reason, or even a dominant reason, for the overtime decrease.

Thus, it is only reasonable to expect the level of overtime expense to continue to decrease over next five years under a PBR scheme. The Company has committed to the continued the downsizing of its workforce[22] (Exh. BGC- 53, pp. 17-23) and introduction of efficiency measures such as the increased of AMR devices, lower odorization levels, etc. *Id*., pp. 22-23; RR-AG-1,

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[21] In spite of BoGas's assertion in its initial brief to the contrary, its Marketing Vice President testified that some productivity measures were introduced in the 3rd and 4th quarter of 1995 and should be considered as cause of reduced overtime as well as a reason to expect this level to continue to decrease, not increase. Tr. XVI, p. 212.

[22] As noted in his initial brief at p. 75, fn. 40, the Attorney General is concerned that the Company's efforts relating to this adjustment are meant to "beef-up" its overtime expense account so that future downsizing will present the "appearance" of efficiency gains when in fact the work is just shifted to the remaining employees and financed through an overtime allowance set at a bloated, historical level. Such actions would be imprudent, and not make economic sense, particularly where shareholders capture the benefits and savings of the downsizing, simply to have the ratepayers fund the work at overtime wage rates paid out of the generously funded overtime expense account.

pp. 124, 120. Therefore, it is reasonable to conclude that the test year levels of overtime do not understate the Company's needs and, indeed, provides a generous yet representative level of funding which may reasonably be expected to occur over the next five years. *See*, *Massachusetts Electric Company*, D.P.U. 92-78, pp. 13-15 (1992); *Boston Edison Company*, D.P.U. 1720, pp. 55-56 (1984).

The proposed overtime adjustment should therefore be denied and the Company's proforma cost of service reduced by the amount of $2,500,000. Exh. BGC-38, p. 16.

D. The Company's Plans For Balancing Service And Allocation Of Local Production And Storage Costs Further Justify, At Least, A Ten-Year Life Extension For The Commercial Point Facilities

Not only does the Chief executive officer's testimony support an extension to the useful life of the Commercial Point facilities, but the basis of two Company’s other proposals also compel a similar result. First, the Company's proposed Balancing Service, as described in its initial brief and testimony, is founded on the availability of the Commercial Point facility and the life extension proposition. *Co. Int Br*., pp. 145; Exh BGC-75, pp. 23-27. Second, these same Commercial point facilities are the center piece of the allocation of local production and storage which the Company asserts is necessary for the maintenance of distribution system integrity. Exh. BGC-85.

Both proposals are slated for implementation at the time of and for the five-year duration of the Company’s price caps and multi-year unbundling plan which would extend, at least through the year 2007. *Id*. Absent local storage and production facilities, i.e. the Commercial Point facilities, BoGas’ system responsiveness to weather changes and severe cold snaps is placed in jeopardy. *Id*. Hence, it is clear from the Company's own testimony that the Commercial Point facilities will be an integral part of the Company's distribution system for the foreseeable future. Therefore the service life of the Commercial Point facilities should be extended for an additional 10 years and the Company directed to rerun its 1993 depreciation to account for this change in useful life or adopt the Attorney General's estimate of $2.3 million. Exh. AG-55, Schedule of Indicated Remaining Life Accrual Rates, p. 2.

E. Bad Debt Adjustment

1. The Company's Bad Debt Adjustment Should Be Apportioned Between Base Rates and Gas Costs

The Attorney General has recommended in his initial brief that the Company's bad debt adjustment should be allocated between base rates and the CGAC. *AG Int. Brief*, p. 67; *see also*, *DOER Int. Br.*, p. 12;. The Company admits that both the Attorney General and DOER are correct in theory. *Co. Int. Br.*, p. 111. However, the Company claims that there are three problems with this proposal. The Attorney General takes issue with each of these alleged "problems" below.

First, the Company claims that the pace with which C&I sales customers, who only account for 12 percent of the Company's 1995 bad debt, migrate to transportation-only service cannot yet be determined. *Co. Int. Br.*, pp. 111-112. According to the Company, the majority of its bad debt customers will not migrate until a much later date. *Id.*, p. 112. However, the fact remains that there will be a migration of customers to transportation-only service over the ensuing years and that one of the issues in this docket is the Company's proposal to exit the merchant function. Exh. BGC-1. As such, some allocation of bad debts between base rates and the CGAC should be made as a result of the Company's proposal to exit the merchant function and the resulting migration of customers.

Second, the Company claims that residential customers that cause bad debts are likely to remain with the Company, as there is no incentive for such customers to migrate to other suppliers. *Co. Int. Br*., p. 112. The Attorney General believes, however, that there is an incentive for all bad debt customers whose service has been terminated to seek alternative suppliers. While admittedly, not all suppliers will necessarily seek out bad debt customers, said customers may seek out an alternative supplier to the supplier that has terminated their service.

Third, the Company states that it would be extremely difficult to separate bad debts between gas costs and distribution costs. *Id.*, *citing*, Tr. 15, pp. 30-32. However, the Company is proposing, in this case, to unbundle its rates. The process of unbundling involves the separation of unique services/goods and their related expenses that a Company supplies. Consistent with its proposal to unbundle, the Company will *e.g.,* separate employee-related expenses or at least allocate a portion of an employee's time between each of the unbundled elements. In fact, the Company has already assigned cash working capital and gas supply costs to the CGAC. Similarly, Boston Gas can also separate bad debts between gas costs and distribution costs. Just because the Company has failed to track bad debts in this manner and conveniently claims that this would be too difficult to do (*Co. Int. Br.*, pp. 111-112), does not mean that it can not or should not be done.

Ultimately, the separation comes down to a dollars issue for the Company, where it will be able to retain a windfall of $8,329,500 if the Department does not order this allocation of bad debt. *AG Int. Br.*, pp. 66-67. This unjust benefit to the Company's shareholders at the cost of its customers should not be allowed by the Department.

2. The Company's Lagging Bad Debt Approach

The Company criticizes the Attorney General's argument that the Company erred in lagging its revenues one year behind the year of the net write-offs in determining its bad debt adjustment. *Co. Int. Br*., pp. 113-115; *citing*, *AG Int. Br.*, p. 68. The key to this issue is whether the Department intended, in its order in D.P.U. 93-60, to specifically approve the Company's use of the lagged revenue methodology in determining its bad debt adjustment. To determine the Department's intent, one must only look at the Department's language in D.P.U. 93-60. In its order, the Department stated:

> The Company calculated its uncollectible expense by determining the three-year weighted average of net write-offs as a percentage of firm retail revenues for the corresponding period. . .

D.P.U. 93-60, p. 152. The Company claims that the "Department's use of the words 'for the corresponding period' in D.P.U. 93-60 was an explicit recognition of these lags." *Co. Int. Br*., p. 114. The Attorney General will let these words speak for themselves and will rest on the Department's correct interpretation of its own words. The definition of the word "corresponding" (*i.e.*, something that is similar, analogous or equal (to something). (New World Dictionary)), provides sufficient insight as to the Department's true intent in D.P.U. 93-60.

3. The Company's Correction To Its Bad Debt Expense Should Be Rejected By The Department

In the Company's Initial Brief, it admits that "[t]he Attorney General correctly observes that the percentage of non-gas bad debts is higher than the percentage for bad debts charged to utility service -- 7.8% v. 2.2%." *Co. Int. Br.*, p. 116. The Company then goes on to state that "[t]he Attorney General never questioned the rate differential and therefore no record support exists for this recommendation which should be denied." *Id.* However, Department precedent is quite clear and this Company should be aware that "parties requesting a general rate increase are on notice that all aspects of its filing are at issue." *Boston Gas Company*, D.P.U. 93-60-E, p. 8 (1994); *Bay State Gas Company*, D.P.U. 92-111, pp. 5-6 (1992); *Bay State Gas Company*, D.P.U. 1535-A, p. 17 (1983). Furthermore, the Department has held that:

> the obligation to provide notice has been fulfilled where (1) the existence of specific topics for inquiry have been noted in a previous Order; (2) a witness has been questioned on a particular topic; (3) an information request has been marked as evidence regarding an issue; or (4) a company has been asked to provide a witness to address a certain topic.

Boston Gas Company, D.P.U. 93-60, p. 8; *Bay State Gas Company*, D.P.U. 92-111, p. 6; *New England Telephone and Telegraph Companies*, D.P.U. 86-33-D, p. 9 (1987). Accordingly, the Company was put on notice that this part of the Company's filing was at issue. Furthermore, given that the Attorney General's recommendation is based on record evidence, the Company's argument that the Attorney General never questioned the rate differential must be rejected.

Furthermore, the Company, who has proposed the referenced correction to its bad debt expense, has the burden of proof in this case. However, failure to meet ones burden of proof with record evidence does not allow one to pass the burden to another party and then go on to testify on brief, as the Company did when it stated:

> In fact, the higher rate is the result of the Company's practice of first applying customer payments to outstanding gas usage account balances rather than applying payments on a pro rata basis. This practice results in a higher proportion of a customer's unpaid balance being attributed to non-gas related billings.

Company Brief, p. 116. This new testimony provided in the Company's Initial Brief should not be relied upon by the Department as it is a response to the Company's obvious failure to meet its burden of proof on the record in this case. Therefore, the Company's correction to its bad debt expense, which is unsupported in the record, should be rejected by the Department.

Finally, it should be noted that the Company's argument on brief directly contradicts the testimony of its witness Ms. Kelly. Ms. Kelly was very clear that the Company establishes its yearly bad debt expense accrual on Boston Gas Company as a whole, not on the individual business. Tr. 21, pp. 66-67. Therefore, any assignment of the accrual to the business at a rate other than the overall average is purely arbitrary. The Attorney General's allocation of test year bad debt expense is the only reasonable amount in the record in this case as well as being the only one supported by the evidence. Therefore, the Department should deny the Company's correction.

F. The Department Should Require the Company to Calculate its Weather Normalization Adjustment Consistent with Department Precedent

The straight 20-year moving average technique for calculating weather normalization adjustments has been approved by the Department in the past. *See Boston Gas Company*, D.P.U. 93-60, p. 78 (1993); *Berkshire Gas Company*, D.P.U. 92-210, p. 194 (1993); *Boston Gas Company*, D.P.U. 88-67, Phase I, pp. 67-72 (1988); *Fall River Gas Company,* D.P.U. 750, p. 8 (1981). The Company asserts that the smoothing method produces a more stable method of calculating heating degree days ("HDD"). *Co. Int. Br*., pp. 143-145. This bald assertion does not provide the requisite demonstration that "smoothing"produces a more accurate revenue requirement and more accurate rates than the traditional method. The Company proposes to hold its HDD constant while at the same time updating and incorporating the most recent economic and financial data in its PBR adjustment to base rates. The Department should not accept the Company's proposal which amounts to "trust me, it will work. " Instead, the Department should require the Company to update the HDD in a manner that is simple, easily verifiable, and consistent with Department precedent. Therefore, the Department should apply the 20-year moving average method here and reject the Company's proposal. Accordingly, the Department should require the Company to reduce the revenue deficiency by $194,642, and increase the test year normal throughput volumes relied on in the cost of service studies and in the Company's rate design by 1,038,297 therms, spread over the peak and off-peak periods for each weather sensitive rate class based on the data contained in Exhibit AG-257. *See, AG Int. Br.*, p. 79.

G. If The Department Allows BoGas' 600 Cellular Telephones And Usage Adjustment, Which It Should Not, The Department Should Remove The Company's Radio Equipment From Rate Base

The Company claims that its cellular telephone usage adjustment is "known and measure able" because they are using current levels of usage. *Co Int. Br.*, p. 122. Without a full twelve-months usage to generate an average years' usage, the proposed "normalization" may be unreflective of full years usage, and hence unrepresentative. The Department should reject this overly optimistic forecast as speculative.

If the Department does allow the cost of these ± 600 cellular telephones, including the Company's usage estimates, in rates, the question arises whether the radio system still carried in rate base remains used and useful. With the Company usage two different cellular phone provides, they have, in effect, three communications systems that can provide the same function.

Such duplication of function and the Company's clear preference for the cellular phone technology, calls for a finding that the radio equipment in rate base as no longer used and useful in the provision of service to ratepayers. Hence, the Department, if it allows a full compliment of cellular telephones and usage costs in the cost of service, should reduce rate base by amount of radio equipment $950,000 in rate base. AG-142, p.22, Acc.139-702. *See, Boston Gas Company* D.P.U. 88-67, p. 26 (1988); *Boston Edison Company,* D.P.U. 84-47, p. 5 (1985).

H. Post-retirement Benefits Other than Pensions

The Company fails to address on brief the fact that the current and expected contributions of its Post-Retirement Benefits Other Than Pensions ("PBOPs") have gone down as a result of lower medical cost trends and the reduction in the number of employees related to QUEST. Co. Br., pp. 124-125. While it is true that the Company's accounting will recognize in the future this change in cost over 15 to 20 years by changing the cost accrual, the FAS 106 accrual amount is not the basis for the amount to be included in rates. *Massachusetts Electric Company,* D.P.U. 92-78, p. 83 (1992). The current cash contribution requirement which is the basis for the amount includable in rates, will decrease immediately. This decrease in contribution will not be reconciled in the future to the amount included in rates. Just like a reduction in labor costs from a decease in the number of employees should be reflected in rates immediately, so should this decrease in the level of expected contributions for PBOPs.

I. Pensions

The Company argues the impact of employee reductions on its pension expense in the same way as it did their impact on PBOPs expense. Co. Br., p. 125-126. In both cases, the Company fails to recognize that the Department does not use the accrual amount to determine rates. *Western Massachusetts Electric Company*, D.P.U. 87-260, pp. 44-47 (1988). *Massachusetts Electric Company*, D.P.U. 92-78, p. 83 (1992). Since the Company did not make a specific cash contribution to the trust fund associated with the QUEST severance package, the addition to the QUEST program costs should be denied. There were no cash contributions, since it was simple an accounting mechanism to accrue actuarially determined future expected costs. Unless that contribution is separately defined and made, it will cause future contributions that the Company will include in the cost of service to be higher than they would have been other wise, resulting in the Company collecting twice for the same QUEST costs. Thus, the Department should deny the Company addition to its QUEST costs for the Pensions part of the QUEST program costs.

J. Insurance Reserves

The Attorney General agrees that the amounts of the insurance reserves should have been adjusted for amounts necessary to pay any outstanding claims to those reserves. Co. Br., p. 121. However, the remaining amounts of $350,000 for the group life and $150,000 for the long-term disability insurance should be returned to the ratepayers. *Id*. Since the Company's self-insurance plan worked on a reserve basis, its customers relied on it to accrue to the reserve only the amounts necessary to cover the claims against it. The Company should not be allowed to benefit from its own mistake of over-accruing to the reserve. To do otherwise would establish perverse incentives for utilities to establish reserves and over-estimate annual costs. Therefore, the Department should return these leftover reserves to the ratepayers over a three-year amortization period. AG Br., p. 76.

IX. Rate Design

A. The Department Should Order The Company To Institute A Nine-Month Interruptible Transportation Rate

In his Initial Brief the Attorney General expressed concern over the bargain priced proposal of the Company to assume the entire proceeds of the growing interruptible transportation ("IT") market. The Attorney General continues to oppose the "sale" of IT service to BoGas, as do numerous Intervenors, for all the same reasons set forth in his Initial Brief.[23]

The Attorney General observed that certain current IT customers placed great value on planning certainty and therefore sought "fixed rate" IT service. After review of the initial briefs and consideration of the proposals contained therein, the Attorney General believes that there exists good reason to be responsive to the legitimate concerns of existing IT customers within the Massachusetts business community, so long as it is priced fairly relative to *all* customers. *AIM Int. Br*., pp. 13-16; *TEC Int. Br*., pp. 9-14 and *USG Int. Br*., pp. 4-12. Consequently, the Attorney General recommends that the Department direct the Company to file a 9-month fixed IT rate, based upon its average value of service price over the past three years. See Exh. BGC-7, Revised. During the three-month winter peak, IT service should continue to be priced at a value of service price. Such a rate would provide price certainty for the majority of the year to accommodate IT customers' planning needs. Correspondingly, for firm ratepayers, such a rate provides a potential for yielding increased margins resulting from greater throughput. Tr. XVII, p. 27.

B. The Company's Proposed Customer Charge Increases for the

[23] If the Department entertains this proposal, which it should not, any "sale" should be viewed as simply a lease for the term of the PBR; and the lease rate should reflect an average price ($0.3821) multiplied by test year volumes of 9,804,500 MMBtus or $3,746,300 per year. Exh. BGC-7, Revised.

Residential Customers Violate the Department's Rate Structure Goal of Continuity

In its initial brief, the Company makes a bald claim that its customer charge increases are consistent with the Department's goal of fairness. Co. Initial Brief, pp. 81-83. The Company makes this claim despite the fact that the R-1 customer charge is increased by 43 percent from current levels, the R-2 charge is increased by 50 percent, the R-3 charge is increased by 76 percent, and the R-4 charge is increased by 85 percent. Exh. BGC-83. While not suggesting that these increases are in any way consistent with the Department's fairness goal, apparently, the Company has selectively forgotten the Department's rate structure goal of continuity, and that this goal must be balanced against the goal of fairness. *See Massachusetts Electric Company*, D.P.U. 95-40, pp. 143-144 (1995); *Boston Gas Company*, D.P.U. 93-60, p. 331 (1993); *Massachusetts Electric Company*, D.P.U. 92-78, p. 116 (1992); *Western Massachusetts Electric Company*, D.P.U. 90-300, p. 13 (1991); *Boston Edison Company*, D.P.U. 1720, pp. 112-120 (1984); *Fitchburg Gas and Electric Light Company*, D.P.U. 84-145-A, pp. 59-60 (1984); *Boston Edison Company*, D.P.U. 1350, pp. 173-174 (1984). The Department has stated that continuity means that rate structure changes should be made in a predictable and gradual manner which allows consumers reasonable time to adjust their consumption patterns in response to a change in structure. *Fitchburg Gas and Electric Light Company*, D.P.U. 84-145-A, pp. 59-60 (1984). The Company has not even attempted to make a demonstration that the proposed changes to the customer charges for the residential customers meets this definition. Simply, with the increases it proposes, it can not make that demonstration. *c.f., Bay State Gas Company*, D.P.U. 92-111, pp. 320, 324-325 (1992) (increasing a customer charge by 25 percent is excessive).

Based on Department precedent, the Company's proposal should be rejected. The Attorney General recommends: (1) that customer charge increases for any residential class not exceed 20 percent; (2) as the Department reduces the Company's proposed revenue requirement, customer charge increases for the residential classes should be reduced proportionally; and (3) if the Department accepts the Company's PBR proposal, than the overall percentage increases to residential customer charges should be capped at 10 percent a year. *See, AG Int. Br.*, p. 85.

X. Unbundling Proposal

The Company has stated that the Attorney General supports the Company's unbundling proposal, as filed. This is not accurate. The Attorney General in his initial brief stated his position in summary:

> The Attorney General sees merit in both the BoGas and DOER plans. Each was offered to address the myriad of issues raised by BoGas' intention to fully unbundle its services and exit the merchant function. The primary concern of this Office is with Basic Service and the treatment of passive customers of all classes. This issue has not been addressed by either plan with any degree specificity and is slated therefore to be addressed in Phase II.
>
> In light of the aforementioned, the Attorney General recommends that the Department allow the Company's Mandatory Plan to be implemented (with the Attorney General's suggested revisions) on December 1, 1996 for customers prepared to move to transportation. *Consideration in Phase II of this proceeding* would include the design and implementation of Basic Service, treatment of passive customers and *whether a voluntary or mandatory capacity disposition plan should be implemented for all customer classes*. Implementation of the Voluntary Plan at this time may leave stranded costs behind to be borne by the remaining customers. No customer should be allowed transportation while leaving costs behind. The date to resolve the Phase II issues would be set for April 1, 1997. That would also be the date from which BoGas would initiate its exodus from the merchant function for all classes and simultaneously open all customer classes to competition, would also be April 1, 1997. (emphasis supplied)

AG Int. Br., p. 97. Nothing in the briefs of the Parties has caused the Attorney General to change his position from that stated *supra*.

XI. Conclusion

Wherefore, for all the foregoing reasons set forth in his Initial Brief and herein, the Attorney General submits that the Department should reject the new rates, tariffs and proposals filed by Boston Gas Company on May 14, 1996 and should, instead, order the Company to file new rates and tariffs consistent with the recommendations of the Attorney General.

RESPECTFULLY SUBMITTED,

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